SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2006-OLR-7

Richard W. Voss,
Attorney at Law

FIRST MATTER

A man hired Attorney Richard W. Voss in 1999 to pursue claims against a contractor, who did business under two company names, and the contractor's insurer. The client had earlier engaged the contractor to construct a basement and an addition to the client's residence. The client's decision to pursue claims against the contractor and the entities the contractor controlled followed the client's receipt of a report from a private building inspector who opined that the work performed on the client's residence was of such poor quality that removal and re-installation was necessary to achieve proper workmanship and to follow the contract between the parties.

Mr. Voss had previously represented the client and the client's wife in a bankruptcy. Subsequent to that, Voss also represented the client's wife in her stipulated divorce from the client.

There was no written fee agreement governing the terms of Mr. Voss's representation of the client. The client initially thought Voss was representing him on an hourly fee basis, probably $100 per hour. The client ultimately came to be of the view that Voss was representing him on a contingent fee basis, probably 20% of any recovery. Voss likewise believed he was

representing the client on a contingent fee basis. There was, however, no written contingent fee agreement. Voss violated SCR 20:1.5(c), which states in relevant part:

> A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

The client never paid any funds to Mr. Voss for legal services provided, but the client did pay the filing fee in the litigation and other costs. Voss states that the funds advanced for costs were run through his trust account, but he cannot produce any trust account records in connection with these costs transactions. Voss violated former SCR 20:1.15(c)(5)(e), effective through June 30, 2004, which stated in part:

> Complete records of trust account funds and other trust property shall be kept by the lawyer and shall be preserved for a period of at least six years after termination of the representation…

Voss also violated current SCR 20:1.15(e)(6), which states in part:

> A lawyer shall maintain complete records of trust account funds and other trust property and shall preserve those records for at least 6 years after the date of termination of representation.

With respect to the issue of trust account records, if any, maintained by Mr. Voss in connection with his representation of the client, Office of Lawyer Regulation ("OLR") staff, in a letter to Voss dated July 8, 2005, directed Voss to state by July 21, 2005 whether he possessed the relevant trust account records, and if so, to submit them to OLR by that date as well. Voss did not respond, and the same demand for a response was made in a letter from OLR to Voss dated July 26, 2005, sent by regular and certified mail, with a new response deadline of August 3, 2005. The certified letter was received in Voss' office on July 27, 2005, but Voss did not respond by the extended deadline. Voss was then personally served on August 10, 2005 with the

OLR request for information. Voss finally addressed OLR's request for trust account record information in a letter to OLR dated August 16, 2005. By failing to make the required response until personally served, Voss violated SCR 22.03(6), which states:

> In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.

SCR 22.03(6) is enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states, "It is professional misconduct for a lawyer to…violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers."

Efforts to resolve the dispute between the client and the contractor and his business entities short of litigation were unsuccessful. Mr. Voss commenced litigation on behalf of the client in circuit court on October 26, 2001. Named as defendants were the contractor (doing business as the two entities) and the contractor's insurer.

In May, 2002, counsel for the contractor filed a notice of motion and motion to dismiss the contractor personally from the lawsuit, along with a supporting affidavit and brief in support of the motion. Counsel further moved to bifurcate the liability and insurance coverage issues. Mr. Voss had failed to assert in the civil complaint that the contractor did work on the client's home construction project as an employee and/or agent of the two business entities. Voss did not file any responsive pleadings to the motion to dismiss the contractor personally, nor did he otherwise act to create an issue of fact regarding the contractor's personal involvement in the construction project at the client's home. In failing to take steps in the litigation to personally link the contractor to the alleged defective construction at the client's home, Voss violated SCR 20:1.1, which states:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

A hearing on the motion to dismiss the contractor was held on May 22, 2002. Mr. Voss arrived late at the motion hearing, after the court had already granted the motion to dismiss the contractor personally from the suit. When Voss did arrive, the court allowed him an opportunity to be heard, and Voss did resist the dismissal of the contractor from the suit, but without presenting witness testimony or other evidence in support of his position. Voss stated the valid concern that with the contractor out of the suit, his two businesses might essentially be non-entities in the remainder of the litigation. Voss did not object to the bifurcation motion. By arriving late at the motion hearing and presenting no evidence to support his opposition to the motion to dismiss the contractor, Voss violated SCR 20:1.3, which states:

> A lawyer shall act with reasonable diligence and promptness in representing a client.

Mr. Voss did not inform his client of the May, 2002 motion, the motion hearing, or the resultant dismissal of the contractor from the suit. Voss violated SCR 20:1.4(a), which states:

> A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The defendant insurance company then moved that it be dismissed from the suit on grounds that its coverage did not extend to the acts alleged in the suit. That motion was granted at a hearing on October 14, 2002, and the suit was ultimately dismissed outright. The client did receive a copy of the insurer's motion. Further, Mr. Voss' office mailed the client a copy of Voss' one-paragraph brief in opposition to the removal of the insurer from the suit. Voss did not, however, inform the client of the granting of the motion, and the dismissal of the suit. Voss

again violated SCR 20:1.4(a). The client learned of the case disposition when he personally visited the courthouse and inquired as to case status.

In late 2002, having learned of the dismissal of his lawsuit from a source other than Mr. Voss, the client asked Voss's office for his case file. Voss's office provided the client an incomplete file. The client then consulted with another attorney, who pointed out to Miller the incompleteness of the file. That attorney wrote to Voss on February 24, 2003, stating:

> I have been retained by [the client] to follow up on his lawsuit filed by your office as referenced above. It appears that [the client] previously requested his file from your office and he has delivered his file to me. There are substantial gaps in the file in the way of missing pleadings, correspondence and the like such that it is nearly impossible to reconstruct, based on the CCAP entries, what actually occurred in this case.
>
> I am requesting that you please check and if you do have other portions of the file, forward them to my office. If you have questions or concerns, please feel free to contact me.

In a letter dated January 20, 2005, OLR staff provided written notice to Mr. Voss that the client's grievance had been designated for formal investigation. In the same letter, OLR posed a series of questions and requests for information, including what response, if any, Voss provided to the February 24, 2003 letter from the client's successor counsel. Rather than addressing the direct question posed concerning the response, if any, he provided to the February 24, 2003 letter from successor counsel, Voss stated, in correspondence to OLR dated February 28, 2005:

> [T]here were no other things in my file that would appear to have been helpful to [successor counsel]. I did not hear from her after the request was made.
>
> …[E]nclosed are the remaining parts of the file which I do not believe were given to [the client]…

By failing to timely honor the request for delivery of the case file to the client and/or successor counsel, Mr. Voss violated SCR 20:1.16(d), which states:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

SECOND MATTER

On July 19, 2004, there was an overdraft in the amount of $14,422.85 on the account utilized by Attorney Richard W. Voss of Rhinelander as his client trust account. The overdraft occurred because a check deposited in Voss' trust account was returned by the maker's bank because of a missing endorsement. Additionally, Voss was not maintaining accurate and complete trust account records and had taken a cash withdrawal from a deposit to the trust account. Finally, the account that Voss has been using for his client trust account is not an IOLTA pooled-interest trust account.

On July 14, 2004, Voss deposited a check in the amount of $59,241.86 into the account he utilizes as his client trust account. The check represented the proceeds from a sale of real estate by Voss' clients and was made payable to "Voss Law Office Trust Account." Voss deposited the item on December 14, 2004, and took a $400 cash withdrawal from the deposit. While the check was made payable to "Voss Law Office Trust Account," Voss endorsed the check with his signature only. On December 19, 2004 the check was returned to Voss' bank because the endorsement did not match the payee on the check. The bank removed $59,241.86 from Voss' account, leaving a negative balance of $14,422.85 in the account.

While Voss advised OLR staff that he had routinely endorsed checks made payable to his firm or to his trust account merely by signing his name, this check was returned by the maker's bank because he hadn't endorsed it as "Voss Law Office Trust Account." Before resubmitting

the check, Voss endorsed the check again; however, this time he merely wrote "Voss Law Office" under his prior endorsement, without including "Trust Account."

A review of Voss' trust account records revealed several record keeping deficiencies. Voss's transaction register for the period beginning on June 14, 2004 and continuing through July 30, 2004 included a number of inaccuracies, including inaccurate or missing entries, and incorrect calculations. Specifically, in his transaction register, Voss had failed to: (1) accurately record the date, check number, and payee of a check issued from his trust account; (2) record the $400 cash withdrawal taken by Voss from a deposit to the trust account; (3) record the return of the $59,241.86 check and the subsequent removal of that amount from Voss' trust account by his bank; and, (4) maintain an accurate running balance. Additionally, the subsidiary client ledgers provided by Voss contained additional inaccuracies and errors, including Voss' failure to maintain a running balance in several of the subsidiary client ledgers.

The account utilized by Voss as his client trust account and reported on the overdraft agreement filed by Voss with the Office of Lawyer Regulation as his client trust account is not an IOLTA trust account. Initially, Voss provided the Office of Lawyer Regulation with only partial copies of requested bank statements for his trust account. However, once Voss provided complete copies of the bank statements, it was discovered that the account utilized by Voss as his client trust account is actually a non-interest bearing personal checking account. Further, the account is designated as a "Personal Checking" account on the monthly bank statements, which also included the detail of activity in several of Voss' personal bank accounts on the same statement. Voss' bank confirmed that the "Personal Checking" account utilized by Voss as a client trust account is not an IOLTA account. The bank also confirmed that Voss does have a separate business account for his law office that is clearly identified as a non-personal account,

the activity in which is sent to Voss in a separate bank statement. Because the account was a non-interest bearing personal checking account and had been used by Voss since on or before March 21, 1986, it appears that Voss has failed to accrue and pay interest to the Wisconsin Trust Account Foundation (WisTAF) on all pooled client trust funds since adoption of that requirement pursuant to SCR Chapter 13. Voss is not exempt from the IOLTA account requirements pursuant to SCR 13.04.

Finally, within the year prior to the overdraft, Voss had received training regarding trust account management and the record-keeping obligations of SCR 20:1.15. Given this training, Voss should have been aware of his record keeping obligations, as well as the requirement to pay interest to WisTAF on all pooled client trust funds.

By taking a cash withdrawal from the deposit in his trust account of the $59,241.86 check, Voss violated SCR 20:1.15(e)(4)a., which states "No disbursement of cash shall be made from a trust account or from a deposit to a trust account…" By failing to accurately record the date, check number, and payee of one or more checks, and by failing to maintain an accurate running balance in his transaction register, Voss failed to comply with the trust account record keeping requirements of SCR 20:1.15(f)(1)a., which states:

> The transaction register shall contain a chronological record of all account transactions, and shall include all of the following: 1. The date source and amount of all deposits; 2. the date, check or transaction number, payee and amount of all disbursements…; 3. the date and amount of every other deposit or deduction of whatever nature; 4. the identity of the client for whom funds were deposited or disbursed; and 5. the balance in the account after each transaction.

By failing to maintain a running balance in his subsidiary client ledgers, Voss violated SCR 20:1.15(f)(1)b., which states "A subsidiary ledger shall be maintained for each client or matter for which the lawyer receives trust funds, and the lawyer shall record each receipt and

disbursement of that client's funds and the balance following each transaction." By failing to maintain a pooled interest-bearing account, by failing to participate in the Interest on Trust Accounts Program, and by depositing client and third party funds that are nominal in amount and/or intended to be held for a short period of time in a non-interest-bearing account, Voss violated: (a) Former SCR 20:1.15(c)(1)[in effect prior to July 1, 2004], which states, "A lawyer who receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds …"; (b) SCR 20:1.15(c)(1) [in effect as of July 1, 2004], which states **"**A lawyer who receives client funds shall maintain a pooled interest-bearing, demand account for deposit of client or 3rd-party funds…"; and, (c) SCR 13.04, which states **"**An attorney shall participate in the [Interest on Trust Accounts] program as provided in SCR 20:1.15…" SCR 13.04 is enforceable under the Rules of Professional Conduct for Attorneys via SCR 20:8.4(f), which states in relevant part, "It is professional misconduct for a lawyer to…violate a…supreme court rule regulating the conduct of lawyers."

Attorney Voss received a private reprimand in December, 2004 for violations of SCR 20:1.1 and 20:1.4(a) occurring in the context of representing a client as the plaintiff in a lawsuit.

In accordance with SCR 22.09(3), Attorney Richard W. Voss is hereby publicly reprimanded.

Dated this 9th day of July, 2006.

SUPREME COURT OF WISCONSIN

/s/
Curry First, Referee